APPEAL NO. 040385
FILED APRIL 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 22, 2004. With respect to the issues before him the hearing officer determined that the respondent (claimant) did not sustain an injury in the course of scope of her employment on _____; that the appellant's (carrier) contest of compensability was not based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thereby allowing the carrier to reopen the issue of compensability; that as a consequence of the carrier being unable to reopen the issue of compensability of the claimed injury, it became compensable as a matter of law; and that the claimant had disability from December 7, 2002, through the date of the hearing. The carrier appeals these determinations. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The carrier argues that the hearing officer erred in determining that it was not permitted to reopen the issue of compensability because the information upon which its contest was based was not newly discovered evidence. The hearing officer made findings of fact reflecting that no later than December 20, 2002, the carrier learned of the claimant's prior injury to the same body part as alleged in the _____, claimed injury; that it did not initiate the required medical examination (RME) until March 11, 2003; that the carrier scheduled the RME on April 23, 2003, and received the RME report on May 9, 2003; and that the carrier did not dispute compensability of the claim until June 17, 2003. As these findings are supported by the record, we cannot agree that the hearing officer erred in determining that the carrier was not permitted to reopen the issue of compensability because the information upon which its contest was based, specifically, the RME report, was not newly discovered evidence that could not have reasonably been discovered at an earlier date and, as such, the claimant's claimed injury became compensable as a matter of law.

The hearing officer likewise did not err in determining that the claimant had disability from December 7, 2002, through the date of the hearing. That issue presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). A disability determination can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). Nothing in our review of the record indicates that the hearing officer's disability determination is

so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75061.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge